

REMARKS

This Amendment is in response to the Office Action dated December 11, 2003. The Office Action states that Claims 2-5, 8 and 10-28 were pending in the case, but Applicants believe Claim 29 is also pending in light of a Supplemental Amendment filed by Applicants on December 5, 2003, as discussed in more detail below. Upon entry of this Amendment, Claims 1, 3, 4, 6, 7, 9, and 11-28 will be cancelled. Thus Claims 2, 5, 8, 10 and 29 will remain pending in the case.

The Office Action states that it is in turn, responsive to an Amendment filed by Applicants on November 12, 2003. Applicants are concerned however, that a Supplemental Amendment filed by Applicants on December 5, 2003 along with a Form PTO 1449 may not have made it to the Examiner's desk. Applicants therefore include as **Attachment A** to this Amendment, a true and correct copy of the Supplemental Amendment filed by Applicants on December 5, 2003 and a true and correct copy of the Form PTO 1449 which listed one reference thereon, namely U.S. Patent No. 4,659,361. The Supplemental Amendment added Claim 29 and further amended the claims to make it clear that what was claimed was a novel compound or a salt thereof, and not a novel compound and a salt thereof. In response to this Amendment, Applicants respectfully request that the Examiner acknowledge entry of the December 5, 2003 Supplemental Amendment. Applicants in the above Claim Listing have assumed that the December 5, 2003 Supplemental Amendment was received and entered in the case and the amended claims above amend over those provided in the December 5, 2003 Supplemental Amendment.

The Office Action rejects 2-4, 8 and 10-28 under 35 U.S.C. Section 103(a) as obvious over the combined teachings of Muller et al. I, II and Daum et al for reasons set forth in prior Papers in the case. The Declaration filed in the case on November 12, 2003 was deemed by the Office Action to have little probative value on the basis that the declaration includes only one prior art compound and was not commensurate in scope with the claims. Also, it added that the instant compound was believed to be harmful to wheat and corn whereas the prior art compound is not. The Office Action rejects Claim 5 as unpatentable over these same references, alleging that the reaction of a specific sulphonamide with a triazolinone does not render the process step itself patentable anew. Claims 1-5, 8 and 10-28 were rejected under the Office Action under the judicially created doctrine of obviousness

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type double patenting over Claims 1-6 of U.S. Patent No. 6,180,567 on the basis that the instant claims were positional isomers of '567. Claims 1-4, 8 and 10-28 are rejected under the same doctrine as being unpatentable over Claims 1-9 of U.S. Patent No. 5,094,683 alleging that when R² is hydrogen it is the positional isomer of the claimed compounds therein.

Applicants have limited Claim 2 to a particular compound and its salts. As such, the claims are now believed to be unquestionably commensurate in scope with the Declaration filed November 12, 2003.

Applicants respectfully assert that the compound of Claim 2 has been tested according to the Declaration of Dr. Auler filed November 12, 2003 in comparison with the positional isomer which is known from U.S. Patent No. 6,180,567. Applicants respectfully assert that they believe that the compared prior art compound is the closest prior art with regard to the inventive compound of the present invention, as it is its positional isomer. Applicants respectfully assert that such a comparison unquestionably demonstrates the unexpectedly superior results obtained with the present invention, and therefore, the present invention must be considered patentable.

In order for the Examiner to appreciate the unexpectedly superior results of the present invention, Applicants wish to explain the Declaration of Dr. Auler in further detail. Showings made in the Declaration clearly provide a surprising herbicidal activity at low application rates (5 or 10 g/ha). This improved activity at lower application rates is not taught or suggested in the prior art and is indeed an unexpectedly superior result of the present invention.

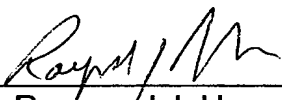
Applicants respectfully urge that selectivity with regard to a given crop is not necessary to support patentability of the present invention because the invention is directed to a herbicide and it is enough to show unexpectedly superior herbicidal activity for the claims to be patentable, and this is clearly demonstrated in the present case by the Declaration. In other words, selectivity is not necessary to prove any further surprising effects beyond the already existing improvement in herbicidal activity. The herbicidal use can be other than in wheat and corn. However, Applicants urge that if selectivity were necessary versus corn and wheat, such selectivity is shown at the lowest application rate of 5 g/ha, thus further supporting the patentability of the present invention.

With regard to the rejection of the claims over US Patent No. 5,094,683, Applicants point out that these amendments limiting Claim 2 to a specific compound renders this rejection moot. The rejection appears to be that because R² could be hydrogen according to the instant claims prior to their amendment, it was a simple positional isomer with no unexpectedly superior results. With these amendments, R² is methyl, not hydrogen. Therefore, the '683 reference does not disclose any compound by explicit example which is a positional isomer of the instantly claimed compound. It gives no motivation to make the specific compound wherein the thienyl is substituted by an ester in the 4 position and a methyl group in the 2-position. It does not render obvious the unexpectedly superior results of the present invention of the high herbicidal activity at low application rates. If, in light of these remarks and claim amendments, the Examiner desires any additional comparisons to be provided in additional Declarations, the Examiner is invited to telephone the undersigned to give the undersigned an opportunity to understand what additional comparisons are needed and to provide those comparisons before another Office Action is issued in this case.

Applicants reserve the right to file divisional applications to any subject matter not yet claimed.

Review and reconsideration of the claims and allowance of the same are respectfully requested.

Respectfully submitted,

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